

Revenue Rulings

Objections Lodged Out of Time

Taxation Administration Act 1997

Revenue Ruling TAA.004 (version 2)

Ruling history	
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To	-

Preamble

The *Taxation Administration Act 1997* (TAA) allows a taxpayer who is dissatisfied with an assessment¹ (other than a compromise assessment) or certain decisions of the Commissioner of State Revenue (the Commissioner) to lodge a written objection with the Commissioner (see section 96 of the TAA). This includes an objection to an assessment of a tax liability arising under the *Duties Act 2000*, *Land Tax Act 2005*, *Payroll Tax Act 2007*, *Congestion Levy Act 2005* or Part 9B of the *Planning and Environment Act 1987*.

The TAA states that an objection must be lodged with the Commissioner within 60 days after the date of service of the notice of assessment, or decision, on the taxpayer, except as provided by section 100 (see section 99 of the TAA).

Section 100 allows the Commissioner to permit a person to lodge an objection after the 60-day period. This section thereby confers a discretion upon the Commissioner to permit the lodgement of an objection out of time.

The purpose of this Revenue Ruling is to explain how the Commissioner applies section 100. This includes the process by which a taxpayer may make an application under section 100 and the factors which the Commissioner will generally consider to be relevant in deciding whether or not to grant permission under that section.

Ruling

When is an objection lodged out of time?

An objection is taken to have been lodged out of time if it is received by the Commissioner after the expiry of the prescribed 60-day period (see section 99 of the TAA). The 60-day period runs from the date of service of the notice of assessment, or decision, on the taxpayer.

¹ The TAA defines an assessment to mean an assessment made by the Commissioner under Part 3 (of the TAA) of the tax liability of a person, and includes a reassessment, a compromise assessment and a deemed assessment.

The TAA also states that a document (which includes a notice of assessment) must be taken, unless the contrary is proved, to have been served on a taxpayer²:

- a) in the case of delivery in person – at the time the document is delivered,
- b) in the case of posting – 2 business days after the day on which the document is posted, and
- c) in the case of a facsimile or other electronic transmission – at the time the facsimile or transmission is received, subject to section 125A(2).

Notwithstanding the above, the Commissioner's practice is to accept objections received by post no more than two business days after the expiration of the 60-day period as having been lodged within time.

Dutiable transactions lodged through Duties Online

Where the online duty payment system provided for by the *Duties Act 2000* (known as Duties Online) is used in respect of a dutiable transaction and the Commissioner validates acceptance of the information submitted by the taxpayer in relation to that transaction, the Commissioner is deemed to have made and served an assessment of the taxpayer's duty liability in respect of that transaction (see section 125(1B) of the TAA). The deemed assessment is taken to have been served by the Commissioner on the taxpayer at the time that the user commits the dutiable transaction to payment (see section 125A(3) of the TAA).

When is it necessary to make an application under section 100?

It is necessary to make an application under section 100 of the TAA whenever an objection (other than an objection to a valuation used by the Commissioner in an assessment of land tax) is lodged out of time.

In some cases, a taxpayer may lodge an out of time objection without also making an application under

² See section 125A(1) of the TAA

section 100. Where this occurs, the taxpayer will be advised to also lodge an application under section 100 as explained in this Revenue Ruling. If no such application is received, the out of time objection will be considered as invalid.

Objections to site value of land shown in a Land Tax Assessment

The TAA does not allow for an out of time objection to be lodged against a valuation used by the Commissioner in an assessment of land tax (see section 100(5) of the TAA for valuations provided by the Valuer-General). For valuations provided by municipal councils, there is no mechanism to lodge an out of time objection under Division 3 of Part 3 of the *Valuation of Land Act 1960*.

Can an application under section 100 be made prior to the expiry of the 60-day lodgement period?

An application under section 100 of the TAA should only be made after the expiration of the 60-day period for lodgement of the objection.

How is an application made under section 100?

An application under section 100 of the TAA must be made by the taxpayer in writing (see section 100(2)). Oral applications will not be accepted.

The application must state, fully and in detail, the circumstances concerning, and the reasons for, the failure to lodge the objection within the 60-day period (see section 100(2)). This explanation should include a detailed reference to the factors listed below, to the extent that they are relevant to the taxpayer's circumstances, as well as to any other factors which the taxpayer considers relevant to the Commissioner's exercise of the discretion conferred on him by section 100.

It is preferable for the application to be accompanied by the proposed objection itself (if not already lodged), as the merits of the objection and the likely outcome are relevant in determining an application under section 100. In circumstances where providing the full objection may impose significant cost on the taxpayer, the grounds of objection may initially (i.e. at the time of lodging the application under section 100) be provided in summary form.

Is evidence in support of the application required?

The onus is on the taxpayer to establish why the Commissioner should permit an objection to be lodged after the expiration of the 60-day period. Accordingly,

the taxpayer should provide any evidence that is considered to be relevant to the application.

The Commissioner expects the taxpayer to be able to substantiate all the reasons provided in an application under section 100.

What factors are relevant in determining the application?

The Commissioner generally considers the following, non-exhaustive list of factors to be relevant to an application under section 100. Any other reason or circumstance explaining the failure to lodge the objection within time should also be detailed by the taxpayer in the application. Each application will be considered on its individual merits, taking into account a combination of all relevant factors as stated below.

Merits and likely outcome of proposed objection

The Commissioner will have regard to the merits and likely outcome of the proposed objection.

Reasons for lateness

a) Lateness caused by circumstances beyond taxpayer's control

If the delay in lodging the objection and the application under section 100 was caused by circumstances beyond the taxpayer's control, the Commissioner is more likely to grant permission under section 100. Circumstances beyond the taxpayer's control may include (depending always upon the individual case):

- postal or delivery delays due to strikes or natural disasters (but not where the taxpayer could have arranged other means of delivery because of knowledge of the likelihood of such a delay),
- fires, floods or other natural disasters,
- unavailability of key personnel due to sudden resignation, ill-health or death,
- computer system breakdowns, including third party systems, and
- changes to applicable taxation laws resulting from court decisions.

b) Lateness caused by a taxpayer's representative

The fact that a taxpayer claims the delay in lodging an objection has been caused by his or her representative will not generally on its own be considered to be a sufficient ground upon which to grant permission under section 100 of the TAA. The Commissioner

expects that all taxpayers, including those that are represented, are aware of the relevant time limits under the TAA and that they would pro-actively seek to ensure that their agents comply with such time limits.

The Commissioner accepts, however, that there may be instances where it is appropriate to afford some weight to this factor. This will particularly be the case where the evidence submitted clearly shows that despite the considerable efforts of the taxpayer, his or her representative has nevertheless failed to lodge the objection within 60 days.

Extent of lateness

The extent of the delay between the expiration of the 60-day period and the date on which the Commissioner received the application under section 100 will almost always be a relevant factor

Complexity of issues

The Commissioner will also have regard to whether the issues involved in the assessment, decision or objection are complex or novel.

Unawareness of 60-day time limit

The fact that a taxpayer claims to have been unaware of the 60-day time limit for lodging an objection will generally not on its own be considered to be a sufficient ground for granting permission under section 100. Information regarding objection rights (including the time limit) is well publicised by the State Revenue Office (SRO), including on each notice of assessment itself, in SRO publications and on the SRO website, www.sro.vic.gov.au

Any taxpayer who is uncertain about the objection process may contact the SRO by phone or email.

Any other reason or circumstance

As stated above, all reasons or circumstances explaining the failure to lodge the objection within time should be detailed in the application and will be considered.

What are the possible outcomes of an application under section 100?

The Commissioner may decide to (see section 100(3) of the TAA):

- (a) grant permission to lodge an objection out of time unconditionally,
- (b) grant permission to lodge an objection out of time subject to conditions, or
- (c) refuse permission to lodge an objection out of time.

Is a decision by the Commissioner under section 100 reviewable?

A decision made by the Commissioner under section 100 to refuse permission (or to impose conditions in relation to a grant of an application) is a non-reviewable decision (section 100(4)) as defined in section 5 of the TAA.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.001.